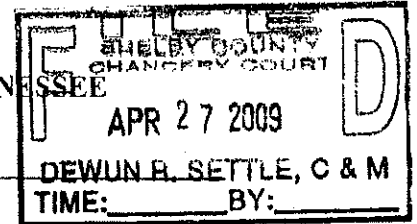


IN THE CHANCERY COURT FOR SHELBY COUNTY, TENNESSEE  
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS



STATE OF TENNESSEE, *ex rel.*  
ROBERT E. COOPER, JR., ATTORNEY  
GENERAL and REPORTER,

Plaintiff,

v.

BLUEHIPPO FUNDING, LLC, et al.

Defendants.

No. CH-08-1979-1

JURY DEMAND

CIVIL CONTEMPT MOTION

The State moves for an order finding the Defendants BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada, in civil contempt for failing to comply with the asset freeze component of this Court's previously entered Order Granting Statutory Temporary Injunction, Asset Freeze, and Other Equitable Relief ("Asset Freeze" Order). In order to fulfill its obligations under the Protective Order, the State is filing two versions of this motion with the Clerk and Master. One version has been slightly redacted to remove references to non-public information learned from the deposition or the Defendants' production of financial documents. The other version, which contains no redactions, has been filed under seal. The State will file the deposition of Mr. John Burcham along with exhibits in support of this Motion once the State receives a final hard copy of the deposition from the court reporter.

The Defendants cannot meet their burden of proof because they have willfully violated the Court's Asset Freeze Order, which was lawfully issued and which unambiguously required

the Defendants not to transfer or liquidate \$1,000,000 and to deposit these funds in a registry account with the Shelby County Clerk and Master's office by February 6, 2009. The Defendants currently possess the ability to pay the funds required and have allocated funds towards entirely discretionary pursuits, including unlawful advertising and the retention of new counsel, instead of attempting to comply with this Court's order.

The Defendants' contention that they have no ability to pay is without merit and refuted by their own representations to other courts. Most notably, before February 3, 2009, the Defendants *voluntarily* agreed to deposit **\$1,800,000** into a segregated, interest-bearing account as part of a *proposed* class action settlement implicating only California residents. Attach. A to this Motion, Settlement Agreement, *Ray v. BlueHippo Funding, LLC*, No. C-06-1807 JSW (N.D. Cal.). Under that proposed settlement, which was filed April 7, 2009, the Defendants deposited \$200,000 by February 3, 2009, and are scheduled to deposit \$200,000 into the same account by the end of each subsequent month for eight additional months. Subject to and following final approval by the federal district court, the Defendants have stated that they can and will pay up to \$564,000 in attorneys' fees, \$50,000 in costs, and \$30,000 in incentive payments for class representatives. Likewise, the Defendants voluntarily filed a settlement with the Washington Attorney General on February 6, 2009, the date the funds under the Asset Freeze were due, committing them to pay \$25,000 to the Washington Attorney General and an unspecified amount in consumer restitution. In addition, the Defendants' claims for poverty are inherently inconsistent with their recent retention of one of the largest law firms in Tennessee.

While it is the Defendants' burden to show how they are not in contempt of the Court's order, the Defendants' conduct meets the factors for civil contempt that the Supreme Court of

Tennessee identified in *Konvalinka v. Chattanooga-Hamilton County Hosp. Authority*, 249 S.W.3d 346, 254-355 (Tenn. 2008).

First, the Order Granting Temporary Injunction, Asset Freeze, and Other Equitable Relief was issued by a court having jurisdiction over both the subject matter of the case and the parties. Tenn. Code Ann. § 16-11-105 specifically authorizes chancery courts to “hear and determine *all controversies* between the state and corporations . . . upon a bill filed by the attorney general and reporter on behalf of the state.” (Emphasis added). This court has personal jurisdiction over the Defendants by way of Tennessee’s long-arm statute because the Defendants have transacted business in whole or in part within Tennessee, advertised in Tennessee, and omitted material facts concerning transactions with Tennessee consumers. Tenn. Code Ann. § 20-2-214(a)(1), (2), and (7). Jurisdiction and venue is also found in the TCPA and cannot be limited by a consumer’s actions. Tenn. Code Ann. § 47-18-108, Tenn. Code Ann. § 47-18-113(b)(1).

Second, the Order Granting Statutory Temporary Injunction, Asset Freeze, and Other Equitable Relief was clear, specific, and unambiguous in stating that the \$1,000,000 could not be transferred or liquidated other than as a deposit to the Shelby County Clerk and Master’s Office. The Defendants acknowledge their understanding of the Order in their February 9, 2009, Notice and indicated that they have failed to comply. Defs.’ Not., at 1.

Third, the Defendants actually disobeyed or otherwise resisted the Order Granting Statutory Temporary Injunction, Asset Freeze, and Other Equitable Relief. The Defendants again acknowledged this in their February 9, 2009, Notice in which they explicitly state, “Defendants failed to meet the deadline of complying with the Asset Freeze on Friday, February 6, 2009.” Defs. Not., at 1. Since this time, the Defendants *have not deposited one cent* with the Shelby County Clerk and Master’s office to comply with the Judgment.

Fourth, the Defendants' failure to remit funds was willful because the Defendants have been and are currently acting contrary to a known duty to remit the funds. While an inability to pay can negate willfulness, the Defendants currently have the ability to pay despite their assertions that their capital flow and previous obligations under the FTC's settlement prohibit them from complying with the Asset Freeze Order.

These two arguments are in direct contravention to the Defendants own actions including those before other courts. The Defendants' capital flow and obligations under the FTC settlement did not prohibit them from voluntarily channeling \$600,000 by the end of April to a separate interest-bearing account and did not prevent the Defendants from settling with the Washington Attorney General for \$25,000 and an unspecified amount in consumer restitution on February 6, 2009. The Defendants' capital flow and obligations under the FTC order (Attach B to this Mot.) also did not prohibit them [REDACTED]

[REDACTED] Further, the Defendants' capital flow and obligations under the FTC settlement did not prohibit them from retaining one of the largest law firms in the State [REDACTED]

#### MOTION

In order to coerce compliance with this Court's Asset Freeze Order, the State seeks (1) to have the Defendants deposit \$1,000,000 with the Shelby County Clerk and Master immediately and as set forth in the Order Granting Statutory Temporary Injunction, Asset Freeze, and Other Equitable Relief; (2) require the Defendants, pursuant to Tenn. Code Ann. § 29-9-104, to pay \$50.00 for each day that they have failed to remit \$1,000,000 as a separate act of contempt, which as of the date of the May 4, 2009, civil contempt hearing will be \$4,350 for eighty-seven days; (3) require the Defendants, pursuant to Tenn. Code Ann. § 29-9-105, to pay \$1,250

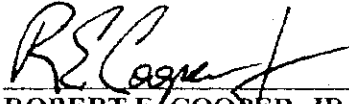
constituting the amount of lost accrued interest in the Clerk and Master's account from February 6, 2009, until May 4, 2009, at .5% annual interest; and (4) require the Defendants, pursuant to Tenn. Code Ann. § 47-18-108(b)(4) to pay \$10,789.59 in attorneys' fees and costs incurred by the State in bringing this civil contempt motion, taking the deposition of Mr. Burcham, and bringing the show cause motion. *See* Attachs. C and D to this Mot., Aff. of Brant Harrell and Aff. of Anne Simmons.

### **PRAYER FOR RELIEF**

In order to coerce compliance with the asset freeze component of the Order Granting Statutory Temporary Injunction, Asset Freeze, and Other Equitable Relief, the State prays that its motion is granted and asks this Court to:

- (1) Require the Defendants to deposit \$1,000,000 with the Shelby County Clerk and Master immediately and as set forth by the Order Granting Statutory Temporary Injunction, Asset Freeze, and Other Equitable Relief;
- (2) Require the Defendants to pay \$50.00 for each day that they have failed to remit \$1,000,000, as a separate act of contempt, which as of the date of the May 4, 2009, civil contempt hearing will be \$4,350 for eighty-seven days;
- (3) Require the Defendants to pay \$1,250 constituting the amount of lost accrued annual interest at .5% from February 6, 2009, to May 4, 2009, the date of the civil contempt hearing;
- (4) Require the Defendants to pay \$10,789.59 attorneys' fees and costs incurred by the State in bringing this civil contempt motion, taking the deposition of Mr. Burcham, and bringing the show cause motion; and
- (5) Grant any other relief it deems appropriate.

Respectfully submitted,



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Attorney General and Reporter



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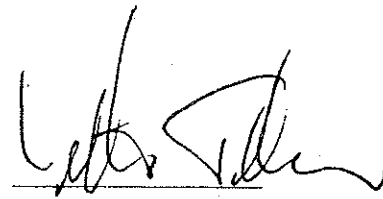
*Attorneys for the State of Tennessee*

### CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent via electronic mail and via U.S Mail on this the 27th day of April to:

(1) John S. Golwen ([jgolwen@bassberry.com](mailto:jgolwen@bassberry.com)), Kristen C. Wright ([kwright@bassberry.com](mailto:kwright@bassberry.com)); and Colleen D. Hitch ([chitch@bassberry.com](mailto:chitch@bassberry.com)), Bass, Berry & Sims, PLC, The Tower at Peabody Place, 100 Peabody Place, Suite 900, Memphis, TN 38103-3672; and

(2) Clayton Friedman ([cfriedman@manatt.com](mailto:cfriedman@manatt.com)), Michael Yaghi ([myaghi@manatt.com](mailto:myaghi@manatt.com)), Manatt, Phelps, and Phillips, LLP, Park Tower, 695 Town Center Drive, 14th Floor, Costa Mesa, CA 92626.



WILLIAM TILLNER